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IN THE

Supreme Court of the United States

OCTOBER TERM, 1938

No. 541

JOHN CARRIER and J. HARVEY CARPENTER, Guardian of John Carrier, Incompetent Veteran,
Petitioners,

vs.

CURLEY BRYANT, *Respondent*

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT OF PETITION

JOHN W. WOOD,
Attorney for Petitioners.

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IN THE

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No. _____

JOHN CARRIER and J. HARVEY CARPENTER, Guardian of John Carrier, Incompetent Veteran,
Petitioners,

vs.

CURLEY BRYANT, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioners John Carrier, an incompetent veteran, and his guardian, J. Harvey Carpenter, pray that a writ of certiorari issue to review the judgment of the Supreme Court of North Carolina, in the cause entitled Bryant vs. Carrier, et al, 198 S. E. 651, which became final on September 28, 1938, on the question whether said judgment contravenes the exemptive provisions of Section 454a, Title 38, U. S. C., (Sec. 3, Public No. 262, 74th Congress) thereby denying said incompetent veteran a right granted by said Federal statute, viz., the right to the benefits of the pro-

ceeds of his insurance and compensation, paid by the United States Government, as invested by his guardian, free from the claims of a judgment creditor.

In support thereof petitioner J. Harvey Carpenter respectfully represents to this Honorable Court that he is, and at all times pertinent to this action has been, the duly appointed and qualified guardian of said John Carrier, an incompetent veteran of the World War, acting under due authority from the Superior Court of Rutherford County, North Carolina, and governed by the rights and duties arising under the laws of said State, and the applicable Federal statutes, in particular Section 454a, Title 38, U. S. C., Section 3, Public No. 262, 74th Congress, and also Section 5 of said Act not printed in the United States Code, except as Note 2 to said Section 454a.

ACTION IN THE STATE COURTS:

As a result of an action filed in the Superior Court, County and State aforesaid, by respondent against said incompetent veteran a judgment was rendered against said veteran in the amount of $1,000 actual, and $500 punitive damages, which judgment was affirmed by the Supreme Court of the State, Bryant vs. Carrier, et al, 198 S. E. 619. Pending determination of that appeal, petitioner, having for apparent reasons filed no supersedeas bond, secured a temporary restraining order enjoining plaintiff from proceeding by way of execution on the judgment on the ground that all of said veteran's estate, consisting of United States Bonds to the principal value of $8,397 and promissory notes of the face value of $3,997 being investments made of moneys paid for the benefit of said veteran by the United States as compensation and disability insurance (War Risk Term Insurance), is exempt from execution on a creditor's claim by virtue of the provisions of Section 454 and 454a, Title 38, U. S. C., (R. 1, 2). Said temporary restraining order was dissolved by the said Superior Court, on the ground that

such moneys having been invested, had lost their character as exempt property and that such investments were subject to execution (R. 5-7). Upon appeal the Supreme Court of the State affirmed (R. 8) its decision, 198 S. E. 651, being rendered September 28, 1938; and judgment became final on September 28, 1938 (R. 16).

This petition for a writ of certiorari is filed within three months of the time when said judgment became final, and there is presented herewith a certified copy of the entire record and proceedings in connection with the restraining order, including those in the Supreme Court of North Carolina.

This petition for a writ of certiorari is filed under the provisions of Title 28, U. S. C., Section 344, paragraph (b), Section 237 Judicial Code as amended.

SUMMARY AND BRIEF STATEMENT OF THE MATTERS INVOLVED

Question Presented

The sole question presented herein is whether Section 454, Title 38, U. S. C., as amended, Section 454a, Title 38, U. S. C., and Section 5, Public No. 262, 74th Congress, prevent satisfaction of the judgment by way of execution on the assets of the veteran derived from payments under the World War Veterans' Act and cognate veteran legislation. The Supreme Court of North Carolina conceded the power of Congress to exempt, but held that such exemption extends only to the money as such, and not to the investments made therefrom, citing Lawrence vs. Shaw, 300 U. S. 245, 81 L. Ed. 623, 57 S. Ct. 443, in support thereof. Your petitioners urge that the Court erred in applying the rule as to exemption from taxation to exemption to claims of a creditor and to non-liability to "attachment, levy, or seizure by or under any legal or equitable process whatever * * *."

Facts from Which the Controversy Arises

The controversy involves solely the refusal of the Superior Court to grant a permanent injunction restraining the judgment creditor levying execution on the assets of the veteran, and the affirmance of such decision by the Supreme Court of North Carolina.

Statutes Relied Upon by Petitioners

Section 454(a), Title 38, U. S. C., Section 3, Public No. 262, 74th Congress, which repealed Section 454 (Sec. 22, World War Veterans' Act) and Section 54, Title 38, U. S. C. (R. S. 4747); and Section 5, Public No. 262, are quoted in full:

Section 454(a), Section 3, Public No. 262, 74th Congress.

"Payments of benefits due or to become due shall not be assignable, and such payments made to, or on account of, a beneficiary under any of the laws relating to veterans shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. Such provisions shall not attach to claims of the United States arising under such laws *nor shall the exemption herein contained as to taxation extend to any property purchased in part or wholly out of such payments.* Section 4747 of the Revised Statutes and Section 22 of the World War Veterans' Act, 1924, are hereby repealed, and all other Acts inconsistent herewith are hereby modified accordingly. The provisions of this section shall not be construed to prohibit the assignment by any person, to whom converted insurance shall be payable under Title III of the World War Veterans' Act, 1924, of his interest in such insurance to any other member of the permitted class of beneficiaries." (Emphasis supplied)

Section 5, Public No. 262, 74th Congress.

"That this Act shall take effect and be in force from and after its passage, but the provisions hereof shall apply to payments made heretofore under any of the Acts mentioned herein."

JURISDICTION

This Court has jurisdiction, as provided in Title 28, U. S. C., Section 344, paragraph (b), Section 237, Judicial Code as amended, to review, by certiorari, the action of the Court below which erroneously construed the Federal statute and thereby deprived the incompetent veteran of a property right, privilege or immunity arising under said Federal statute and which was appropriately claimed on his behalf.

ASSIGNMENTS OF ERROR

The Supreme Court of North Carolina erred (1) in affirming the judgment of the court below dissolving the injunction and refusing to make same permanent, (2) in holding that the assets of the veteran are subject to execution, and (3) in holding that moneys paid a veteran by way of disability compensation and insurance when invested are not subject to the exemptive provisions of Section 454(a) respecting claims of creditors and attachment.

REASONS FOR ALLOWANCE OF THE WRIT

In view whereof Petitioners respectfully urge that the writ should issue because:

1. In so affirming said judgment the Court erroneously decided a question arising under a Federal statute adversely to Petitioners' contentions, and, it is believed, contrary to the purpose and intent of Congress, and the decisions of this Court;

2. The matter at issue is of much importance, since the determination of the issue arising enters into and affects a proper administration from year to year of the trust committed to the guardian petitioner, and likewise affects numerous other trusts of a similar character, involving the same issue. A determination of the issue is essential in order that the guardian petitioner, and those similarly affected, may discharge the duties of such trusts according to the laws of their respective States and according to the Acts of Congress.

3. The decision and opinion of the Supreme Court of North Carolina deprives the incompetent veteran of a right, privilege, or immunity, i. e., an exemption, granted by Federal law.

Attached hereto is the Brief of Petitioners in support of this petition for said Writ of Certiorari, to which reference is respectfully made for discussion of the law involved and of the authorities in support of the right claimed on behalf of the incompetent veteran.

WHEREFORE, your Petitioners respectfully request that this Court issue a Writ of Certiorari to the Supreme Court of the State of North Carolina to certify and send to this Court a full and complete transcript of the record herein, to the end that the cause may be reviewed and determined by this Court as provided by law, that the judgment may be reversed with costs, and for such other and further relief as may be appropriate and granted in the premises.

JOHN W. WOOD,
Attorney for Petitioners.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1938

No. .....

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

OPINION OF THE COURT BELOW

The opinion of the Supreme Court of North Carolina filed September 28, 1938, appears on pages 9-16 of the record, and is reported in the Advance Sheets of S. E. Reporter, Volume 198, page 651. This decision affirmed the judgment of the Superior Court dissolving the injunction against satisfaction of the judgment debt by way of execution on assets of the incompetent veteran derived from disability compensation and insurance payments made for his benefit by the United States Government, and held that such assets are not exempt under Section 454, Title 38, U. S. C., as amended; and the judgment in said Court became final on September 28, 1938.

This Court has jurisdiction. The power and authority of the United States Supreme Court to review the final judgment of the North Carolina Supreme Court in the instant case is clear. Title 28, U. S. C., Section 344, paragraph (b), Section 237 Judicial Code, as amended.

Lawrence vs. Shaw, 300 U. S. 245, 81 L. Ed. 623, 57 S. Ct. 443.

In that case this Court reviewed, and reversed, a decision of the Supreme Court of North Carolina on a question of exemption from taxation arising under the statute involved in the instant case, Section 454(a), Title 38, U. S. C. Likewise, as in that case, the rights of the Petitioners originate in the law of the United States and the construction of such law is necessary to resolve the controversy. Ibid. The question at issue should be settled by this Court, for the reason that it involves not alone the rights of the incompetent veteran in this case, and the applicability of the provisions of the statute to some forty thousand other veterans under guardianship, but also the applicability of the terms of the statute to the hundreds of thousands of veterans and beneficiaries receiving disability or death payments of compensation, insurance, or pension from the United States Government.

STATEMENT

A statement of the material and essential facts is set out in the petition (pages 2 and 3 hereof) and is not repeated here but reference thereto is respectfully made.

ASSIGNMENTS OF ERROR

It is respectfully submitted that the Supreme Court of North Carolina erred in holding that:

1. The judgment of the Superior Court dissolving the injunction and refusing to make same permanent should be affirmed.

2. In holding that the assets of the veteran are subject to execution.

3. In holding that moneys paid a veteran, by way of disability compensation and insurance benefits, when invested are not subject to the exemptive provisions of Section 454(a) respecting claims of creditors and attachment.

ARGUMENT

Epitome

Upon each of the above assignments of error the following argument is respectfully submitted:

I. The judicial and legislative history of Section 454(a) clearly shows that it was the manifest intent and purpose of Congress that the exemptive provisions thereof relating to claims of creditors and attachment comprehended not only the benefits paid but also the proceeds of such benefits invested in usual form.

II. Under the well-settled principles of statutory construction the logical construction of Section 454(a) is that it exempts not only the benefits paid but also the proceeds thereof invested in the usual form from the claims of creditors and attachment.

III. The statute, being within the constitutional power of the Congress, is controlling, and should be liberally construed to accomplish the intent and purpose thereof.

POINT I.

The Judicial and Legislative History of Section 454(a) Clearly Shows That It Was the Manifest Intent and Purpose of Congress That the Exemptive Provisions Thereof Relating to Claims of Creditors and Attachment Comprehended Not Only the Benefits Paid But Also the Proceeds of Such Benefits Invested in Usual Form.

Section 454(a), (Section 3, Public No. 262, 74th Congress, entitled "An Act to safeguard the estates of veterans derived from payments of pension, compensation * * * and insurance, and for other purposes") repealed R. S. 4747 (Section 54, Title 38, U. S. C.), and Section 454 (Section 22, World War Veterans' Act, 1924) and modified all other Acts inconsistent with its provisions.

R. S. 4747 read as follows:

"54. Attachment, levy, or seizure of moneys due pensioners prohibited. No sum of money due, or to become due, to any pensioner, shall be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, whether the same remains with the Pension Office, or any officer or agent thereof, or is in course of transmission to the pensioner entitled thereto, but shall inure wholly to the benefit of such pensioner."

Section 22 read:

"454. Assignability and exempt status of compensation, insurance, and maintenance and support allowances. The compensation, insurance, and maintenance and support allowance payable under Parts II, III, and IV, respectively, shall not be assignable; shall not be subject to the claims of creditors of any person to whom an award is made under Parts II, III, or IV; and shall be exempt from all taxation. Such compensation, insurance, and maintenance and support allowance shall be subject to any claims which the United States may have, under Parts II, III, IV, and V, against the person on whose account the compensation, insurance, or maintenance and support allowance is payable.

"The provisions of this section shall not be construed to prohibit the assignment by any person to whom converted insurance shall be payable under Part III of this chapter of his interest in such insurance to any other member of the permitted class of beneficiaries."

The former statute, R. S. 4747, Act of March 3, 1873, was construed by this Court, in McIntosh vs. Aubrey, 185 U. S. 122, 46 L. Ed. 834, 22 S. Ct. 561, to the effect that the words "Money due or to become due" applied to pension moneys in the pension office or the hands of its agents, and that the exemption from execution did not extend to property purchased out of pension funds.

Section 454, quoted above, (Section 22, World War Veterans' Act), was originally Section 28 of the War Risk Insurance Act as amended by the Act of June 25, 1918. (Section 402 of the Act of October 6, 1917, containing similar language referred only to insurance payments.) The language of this section differed from that of R. S. 4747 in that it did not use the words "due or to become due", but instead "the * * * compensation and insurance payable * * * shall not be subject to the claims of creditors of any person to whom an award is made * * * ".

The Supreme Courts of several States construed this language broadly to apply not only to the funds after their receipt by the beneficiary but to property purchased in part or wholly out of such funds—following Payne vs. Jordan, 36 Ga. App. 787, 138 S. E. 262. See case same title 152 Ga. 367, 110 S. E. 4 and 452. Wilson vs. Sawyer, 177 Ark. 492, 6 S. W. (2d) 825. In re Murphy, 237 N. Y. S. 448.

The departure from this liberal construction arose over the question of exemption from taxation. While the Supreme Court of Georgia in the case of Rucker vs. Merck, 172 Ga. 793, 159 S. E. 501, held the exemption of Section 22 extended also to taxation of property purchased with benefits received, other State Supreme Courts declined to follow. The Supreme Court of Kansas held, in State vs. Shawnee County Commissioners, 132 Kan. 233, 294 Pac. 915, that the word "payable" as used in Section 22 meant the same as "Due or to become due" used in R. S. 4747, and hence that the exemption as to taxation did not extend to property purchased out of the benefits received. This Court denied certiorari in that case, 283 U. S. 855, 75 L. Ed. 1462, 51 S. Ct. 15; but the same question was considered in the case of Trotter vs. Tennessee, 290 U. S. 354, 78 L. Ed. 358, 54 S. Ct. 138. In that case the Supplemental Brief of the Petitioner showed that the legislative history of Section 22 clearly demonstrated that the word "payable" as used therein was synonymous with "paid". This Court did not base its decision on the construction of said word as did

the Supreme Court of Kansas in the case of State vs. Shawnee County Commissioners, supra, but instead held that

> "Exemptions from taxation are not to be enlarged by implication if doubts are nicely balanced. Chicago Theological Seminary vs. Illinois, 188 U. S. 662, 674, 47 L. Ed. 641, 649, 23 S. Ct. 386. On the other hand, they are not to be read so grudgingly as to thwart the purpose of the lawmakers. The moneys payable to this soldier were unquestionably exempt till they came into his hands or the hands of his guardian. McIntosh vs. Aubrey, 185 U. S. 122, 46 L. Ed. 834, 22 S. Ct. 561. We leave the question open whether the exemption remained in force while they continued in those hands or on deposit in a bank. Cf. McIntosh vs. Aubrey, supra; State ex rel. Smith vs. Shawnee County, 132 Kan. 233, 294 Pac. 915; Wilson vs. Sawyer, 177 Ark. 492, 6 S. W. (2d) 825; and Surace vs. Danna, 248 N. Y. 18, 24, 25, 161 N. E. 315. Be that as it may, we think it very clear that there was an end to the exemption when they lost the quality of moneys and were converted into land and buildings. The statute speaks of 'Compensation, insurance and maintenance and support allowance payable' to the veteran, and declares that these shall be exempt. We see no token of a purpose to extend a like immunity to permanent investments or the fruits of business enterprises. Veterans who choose to trade in land or in merchandise, in bonds or in shares of stock, must pay their tribute to the state. If immunity is to be theirs, the statute conceding it must speak in clearer terms than the one before us here."

It will be observed the question was then left open whether the exemption extended to moneys derived from such payments.

This Court had occasion to consider the other phase of the exemption statute—that as to claims of creditors—in Pagel vs. Pagel, 291 U. S. 473, 78 L. Ed. 921, 54 S. Ct. 497, on a claim that such exemption, as to creditors of the deceased veteran, extended to insurance paid his estate (not

the veteran himself) and held, "The purpose of the exemption, Sec. 454, is to safeguard to the insured soldier and the beneficiary payments made under the policy to them or for their benefit. * * * The language of the Statute limits the exemption to "any person to whom an award is made". It is clear that the statute does not extend the exemption beyond the insured and beneficiary.

Thereafter, and on January 28, 1935, the Supreme Court of North Carolina, in State, etc., vs. Bank, 207 N. C. 697, 178 S. E. 487, applied the rule as to taxation announced by this Court in the case of Trotter vs. Tennessee, supra, to the claims of the State as creditor—holding specifically that the property purchased out of the benefits received and invested was not exempt. This Court denied certiorari, 295 U. S. 761; 79 L. Ed. 1704, 55 S. Ct. 921.

It was to cure this uncertainty that Section 3 of the Act of August 12, 1935—Public No. 262, 74th Congress—was proposed. Said act was entitled: "To safeguard the estates of veterans derived from payments of pension, compensation, emergency officers' retirement pay and insurance, and for other purposes." Section 1 thereof amended Section 450, Title 38, U. S. C., as to guardianship matters. Section 2 repealed the embezzlement statutes and enacted a more stringent section as to embezzlement by guardians and other fiduciaries. Section 3 repealed R. S. 4747 and Section 454, Title 38, U. S. C., and re-enacted in language intended to be clearer certain provisions thereof, and it is this section which is involved in the instant case. Section 4 contained a separability clause. Section 5 provided that the provisions of the Act should be prospectively effective as to payments made prior to its enactment.

This Act, Public No. 262, 74th Congress, Title 38, Section 454(a), U. S. C., was enacted as the result of an investigation made by a sub-committee of the Committee on World War Veterans' Legislation of the House of Representatives under H. R. 409, 73rd Congress, and as shown on page 71 of the Report of said sub-committee, submitted January 8,

1935, the Administrator of Veterans' Affairs recommended to it, page 74, that the section of the statute which is involved in the instant case be amended to read as follows:

> "Section to replace Section 22, World War Veterans' Act, Section 454, Title 38, U. S. C., and Section 4747, Revised Statutes
>
> "Section —. Payments made to, or on account of, a beneficiary under any of the laws relating to veterans shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the fiduciary, so long as they remain unexpended for his benefit. *Such provisions shall not attach to any property purchased in part or wholly out of such payments,* nor to claims of the United States arising under such laws. Sections 4747 Revised Statutes, 308 World War Adjusted Compensation Act, and 22 World War Veterans' Act are repealed, and all other acts inconsistent herewith are modified hereby." (Emphasis supplied.)

It will be noted that under the language of this proposed legislation as submitted by the Administrator of Veterans' Affairs, property or investments would not have been exempt from either taxes or the claims of creditors.

Hearings were held by the above mentioned sub-committee and portions of a statement made by Mr. Edward E. Odom, Assistant Solicitor of the United States Veterans' Administration, at the hearing held on December 13, 1934, as shown on page 262, Part 3, Hearings, H. R. 409, 73rd Congress, are quoted below and a more complete statement of the hearing held on said date appears on pages 30 to 33 of the Appendix hereof.

> "Mr. Odom. The suggestion that the Administrator made, I believe, read this way:

'This provision shall not attach to any property purchased wholly or in part out of such payments, nor to claims of the United States arising under such laws.'

"The first clause of that suggested sentence was intended to bring this section into line with the decision of the Supreme Court of the United States in the case of Trotter vs. Tennessee; and, as applied to taxation, probably is correct if the intention of the Congress is that property purchased out of the insurance and compensation payments should not be exempt from taxation. The Supreme Court has held that under the present law it is not exempt; but there is a serious question whether—for example, if a veteran, as I think was suggested by Justice Cardozo, takes his compensation and buys a barrel of flour with it or a side of meat, that that should not be exempt, the same as the money itself; or, if he invests it in bonds, that the bonds should or should not, as might be decided by the Congress, be exempt from the claims of his creditors.

"It was our understanding that this would not affect the present holding that these funds, no matter in what form they are invested, would be exempt from the claims of creditors. But there is a case pending in the Supreme Court of the State of North Carolina, and another one in the Kentucky Supreme Court, where the decision of the Supreme Court of the United States in the case of Trotter vs. Tennessee is being argued as applicable to the claims of creditors; that is, that if the veteran puts his money in property, that it is no longer exempt from the claim of the creditor.

"If that is the proper effect of this language, it occurs to us that the committee might desire to give some consideration to whether they would not change that so as to make it clear that it is only on the question of taxation that the property shall not be exempt.

"In other words, it could be argued, I suppose well, that the veteran's property should be taxed the same as anybody else's. *Now, whether his property should also*

be free from the claims of creditors when that property is purchased with these funds, is the question that ought to be considered by the committee at this time, I think." (Emphasis supplied.)

At the conclusion of all of the Hearings which were held by the above mentioned sub-committee, it recommended, page 79 of its Report submitted January 8, 1935, as follows:

"It is therefore proposed that the following section be enacted to replace Section 22, World War Veterans' Act, Section 454, Title 38, United States Code, and Section 4747, Revised Statutes:

"Sec. 3. Payments of benefits due or to become due shall not be assignable, and such payments made to, or on account of, a beneficiary under any of the laws relating to veterans shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. Such provisions shall not attach to claims of the United States arising under such laws *nor shall the exemption herein contained as to taxation extend to any property purchased in part or wholly out of such payments.* Sections 4747, Revised Statutes, and 22, World War Veterans' Act, are repealed, and all other Acts inconsistent herewith are modified accordingly. (Emphasis supplied.)

"The provisions of this section shall not be construed to prohibit the assignment by any person to whom converted insurance shall be payable under Title III of the World War Veterans' Act of his interest in such insurance to any other member of the permitted class of beneficiaries."

This legislation as recommended by the said sub-committee was subsequently enacted without material change and the Committee of Finance of the Senate in its report (No. 1072, S. 74th Congress) explained the changes intended by Section 3, in part as follows:

"(11) The next change is Section 3 of the bill which proposed a new section to replace Section 22 of the World War Veterans' Act, 1924, and Section 4747 of the Revised Statutes. The purpose of this new section is two-fold: first, to make uniform the law with respect to exemptions granted beneficiaries, and second to clarify the language with respect to such exemptions. * * *

"The two sections have also been construed differently not only by the highest appellate courts of the States, but also by the Supreme Court of the United States. For example, it has been held that 'payments due or to become due' of Section 4747 Revised Statutes refer to the payments before they are made, and that the exemptions of said section do not extend to payments made to a beneficiary or to the guardian of a beneficiary. (See McIntosh vs. Aubrey (185 U. S. 122, 46 L. Ed. 834).) Some State supreme courts have held that the language of Section 22 should be construed similarly. (See State ex rel. Smith vs. Bd. of Com. of Shawnee Co. (132 Kan. 233, 294 Pac. 915)), and although the Supreme Court of the United States denied certiorari in the case just cited it has not passed directly upon that specific question, but has indicated that it would not follow this doctrine with respect to any exemption other than that relating to taxation. (See Trotter vs. Tenn. (78 L. Ed. 128) and Pagel vs. Pagel (78 L. Ed. 627).) The language of the proposed amendatory section will, it is believed, clarify these disputed points and will place the law in conformity with the decisions of the Supreme Court on the subject. It will make the law uniform as to all beneficiaries."

It is apparent from an examination of the proposed legislation as submitted by the Administrator of Veterans' Affairs, the Hearings and Reports of the Committees of Congress, and the statute as finally recommended by these committees and enacted by Congress, that the change which was effected in the language of the proposed legislation concerning "any property purchased in part or wholly out of such payments" was considerately and purposefully

made. It is also apparent that it was the intent and purpose of Congress in enacting this statute to distinguish between the right of a sovereign, on the one hand, and the claim of a creditor, on the other, and to reject the recommendation of the Administrator of Veterans' Affairs which would have subjected such property to the claims of creditors as well as for taxes, and instead to safeguard the estates of veterans derived from benefit payments, even though invested, from all claims other than those of a sovereign.

The right of a sovereign to levy and collect taxes for the public good has always been regarded as superior to that of a creditor to collect his claim and Congress, in refusing to enact the portion of the proposed legislation which removed the exemptive provisions as "to any property purchased in part or wholly out of such payments" as far as creditors were concerned, recognized the higher obligation which it and other legislative bodies place upon a citizen to pay his tribute to a sovereign than upon him to pay his debt to a creditor and enacted such a statute as it believed was sufficient to exempt such property from the claim of a creditor and yet leave the sovereign free to collect its just due.

The Supreme Court of North Carolina had held, in Martin vs. County, 201 N. C. 63, 158 S. E. 847, decided prior to the case of Trotter vs. Tennessee, supra, and the passage of the statute involved in this case, that property purchased out of benefit payments was not exempt from taxation because the word "payable" as used in Section 22—following the theory of the Supreme Court of Kansas in the case of State vs. Shawnee County Commissioners, supra—protected the payments only before they were paid; subsequent to the enactment of Section 3, supra, it held, in Lawrence vs. Shaw, 210 N. C. 352, 186 S. E. 504, that the payments when deposited in a bank by the veteran's guardian are not exempt from taxation. This Court reversed the latter case, Lawrence vs. Shaw, 300 U. S. 245, 81 L. Ed. 623, 57 S. Ct. 443, and said:

"Having no doubt that the moneys payable by the Government to the veteran were exempt until they came into his hands or those of his guardian, we left the question open 'Whether the exemption remained in force while they continued in those hands or on deposit in a bank.' The World War Veterans' Act, 1924, provided that the compensation and insurance allowances should be 'exempt from all taxation.' The Act of 1935 is more specific, providing that the payments shall be exempt from taxation and shall not be liable to process 'either before or after receipt by the beneficiary.' There was added the qualification that the exemption should not extend 'to any property purchased in part or wholly out of such payments.' This more detailed provision was substituted for that of the earlier Act and was expressly made applicable to payments theretofore made. We think it clear that the provision of the later Act was intended to clarify the former rather than to change its import and it was with that purpose that it was made retroactive."

It is believed, and therefore asserted, that this Court recognized in its decision in Lawrence vs. Shaw, supra, that the history of Section 454(a), Title 38, U. S. C., clearly indicated that the intent of said statute is that the exemption as to taxation should cease when the payments are invested but that exemption as to claims of creditors should continue and that the Supreme Court of North Carolina by failing to distinguish in its decision in the instant case between the right of a sovereign and the claim of a creditor, misinterpreted the decision of this Court in the case of Lawrence vs. Shaw, supra, and erroneously construed the provisions of the statute.

POINT II.

Under the Well Settled Principles of Statutory Construction the Logical Construction of Section 454(a) Is That It Exempts Not Only the Benefits Paid But Also the Proceeds Thereof Invested in the Usual Form from the Claims of Creditors and Attachment.

The cardinal rules of statutory construction, uniformly recognized, aid in arriving at the proper meaning of the statute. Among these are that the legislative intent must prevail, that the statute is to be read as a whole, that every part is to be given effect, that particular words out of harmony with the general purposes of the act may be given effect if by way of proviso or execution, and that the express mention of one thing implies the exclusion of another of the same class.

The application of these rules to Section 454(a), Title 38, U. S. C. (Section 3, Public No. 262, 74th Congress), shows that the proper construction of the section is in accord with its judicial and legislative history as above outlined. It has been pointed out that the Act of which this section is a part is entitled "An Act to safeguard the estates of veterans derived from payments of pension, compensation, emergency officers' retirement pay and insurance, and for other purposes." The language of the section is specific: First it provides that benefits may not be assigned before payment, second that payments, either before or after receipt by the beneficiary, shall be exempt from taxation, claims of creditors, and shall not be liable to attachment, levy or seizure by or under any legal or equitable process whatever. Then follows two exceptions, first certain claims of the United States, and second that the exemption *as to taxation* shall not extend *to property purchased* in whole or in part *out of such payments.*

Such specific language removes all doubt as to the meaning of the word "payable," and makes it clear that the exemptions apply *after* as well as *before* receipt by the ben-

eficiary. "Beneficiary" is one, veteran or otherwise, in receipt of benefits.. Culp vs. Webster, 70 Pac. (2d) 273. This is in line with this Court's decision in the case of Pagel vs. Pagel, supra.

Effectuating a liberal purpose, as declared in the enacting clause, the exemption provisions of the statute remain unrestricted by legislative fiat except in the matter of claims of the United States and taxation. The decision of the Supreme Court of North Carolina can be sustained, if at all, therefore, only by resort to an *implied*; certainly not an express, restriction of the exemption, a view which favors creditors whose interests did not constitute the subject matter of the legislation, a view, too, which burdens the statute with an implication against its declared purpose and denies relief to the only class for whose benefit the law was enacted. An implication of this kind might be resorted to, in a proper case, to effectute a declared purpose, or, as Petitioners may do here, to sustain an exemption, but it may never be utilized, as it has been here, to frustrate the will of the Congress. Even so, if anything is to be implied, which Petitioners submit may be improper and is unnecessary in this case, all that may be garnered from the accepted rules of statutory construction sustains Petitioners' contention and has little or no tendency to support the decision of the Court below.

Since the statute contained ample exemption provisions there was no need for Congress to further lengthen it by providing specifically that investments made of the "Payments of benefits" should be exempt from the claims of creditors, and applying the universally accepted maxim "*Expressio unius est exclusio alterius*" as a means of discovering the legislative intent the only logical conclusion which can be reached is that since Congress specifically excepted the exemptive provisions as to taxation it thereby intended that investments made of the benefits should be exempt as to all claims except those for taxes.

Further, as pointed out by this Court, in Lawrence vs. Shaw, supra, the intent was to clarify the language to accord with court decisions. Before the approval of the Act here involved, the weight of authority was to the effect that the exemption from taxation did not extend to investments. This Court so held. As to exemption from the claims of creditors, however, the weight of authority was that the exemption applied and protected investments and property acquired with benefit payments. This Court never decided that question. The two exemptions stood, and stand, on a different basis. The one subject to strict construction—as every citizen is expected to pay his just part of Government expense; the other to be broadly construed for the protection intended. Pagel vs. Pagel, supra, Spicer vs. Smith, 288 U. S. 430, 77 L. Ed. 875, 53 S. Ct. 415.

It is also a fundamental principle of statutory construction that weight is to be given to the contemporaneous construction placed upon a statute by the officers of departments charged with the duty of executing it, especially where such construction has been made by the highest officers in the executive department, and, while not generally controlling, such construction should not be disregarded or overturned except for the most cogent reasons and unless clearly erroneous. Brewster vs. Gage, 280 U. S. 327, 74 L. Ed. 457, 50 S. Ct. 115.

In this connection attention is directed to the following quoted portions of Regulations numbered 5339 and 5340 promulgated on January 27, 1936, by the Administrator of Veterans' Affairs who is charged with the duty of administering all Federal laws concerning veterans and their estates.

"GUARDIANSHIP POLICY REGARDING APPLICATION OF SECTION (3, PUBLIC NO. 262. 74th CONGRESS), TO CLAIMS OF CREDITORS AND TAXATION OF FUNDS IN THE HANDS OF GUARDIANS, CURATORS, CONSERVATORS, ETC.

"*Claims of Creditors*

"5339. (Section 3, Public No. 262, 74th Congress, applies to payments made to or on account of a beneficiary under the laws relating to veterans and exempts such payments, either before or after receipt by the beneficiary, from the claims of creditors, and provides that same shall not be liable to attachment, levy or seizure by or under any legal or equitable process whatever. *The language of the section as a whole is such that it is believed such exemption extends also to property in which the proceeds of such payments are or may be invested.* * * *) (Emphasis supplied.)

"*Taxation of Funds in Hands of Fiduciary*

"5340. (Payments made to or on account of a beneficiary under any of the laws relating to veterans are exempt from taxation. *Property purchased wholly or in part out of such payments is not exempt from taxation.* * * * *)" (Emphasis supplied.)

The distinction which was thus drawn between "claims of creditors" and "taxation" is manifest and these regulations clearly show the construction which has been placed upon the exemption provision of the statute here involved by the highest officer of the executive department of the Government to which veterans and their fiduciaries turn for advice.

It is therefore submitted that by the cardinal rules of statutory construction, as well as by its judicial and legislative history, the statute is shown to apply to payments invested for the benefit of the veteran.

POINT III.

The Statute, Being Within the Constitutional Power of the Congress, Is Controlling, and Should Be Liberally Construed to Accomplish the Intent and Purpose Thereof.

The general rule in both State and Federal Courts is that exemptions—other than as to taxation—are to be liberally construed. Hills vs. Joseph, 229 Fed. 865, 25 C. J. p. 10, Sec. 8(b), and cases cited therein. This is the rule in North

Carolina, Goodwin vs. Claytor, 137 N. C. 224, 49 S. E. 173, page 177. That exemptions as to creditors' claims are to be liberally construed as contrasted with the strict rule as to tax exemptions, recognized by the Supreme Court of Kansas in State vs. Shawnee County Commissioners, supra, and by the Supreme Court of California in Estate of Ferarazza, 28 Pac. (2d) 670, is clearly shown by the cases cited in 25 C. J., supra; and is based upon the public policy of protecting certain individuals, or certain things, for the greater good of the whole. This is particularly true as to pensions, or bounties, workmen's compensation, and insurance. Creditors have no vested interest in such benefits, even though the recipient should pay his just part of Government expense. Nor does the fact that the judgment is for an injury arising in tort affect the applicability of a general exemption, 25 C. J. p. 93, Sec. 155 B, and cases cited.

These principles are discussed, in his apt manner, by the then Chief Justice Cardoza in rendering the decision of the Court of Appeals of New York in the case of Surace vs. Danna, 248 N. Y. 18, 161 N. E. 315. That case involved the exemption provided in a Workmen's Compensation Law, and the decision held that the exemption extended to the moneys received under the Act and deposited in a bank. The decision cited with approval the case of Bank vs. Carpenter, 119 N. Y. 550, 23 N. E. 1108, wherein the same Court held that the claim of a judgment creditor may not be satisfied by way of execution on property purchased by a veteran out of the proceeds of his United States pension, since the New York Statute exempted United States pensions from levy, execution, or seizure. Said the Court (161 N. E. at page 317): "The end to be served, the mischief to be averted, supply the clews and the keys by which construction must be governed."

To like effect is the decision of the Supreme Court of Mississippi in the case of De Baum vs. Hulett Undertaking Co., 169 Miss. 488, 153 So. 513, involving a similarly worded statute, Section 618, Title 38, U. S. C.

That the Congress has the constitutional power to so protect the disabled veteran by safeguarding the proceeds of his compensation and insurance payments seems undisputed. As said in the last above cited case, De Baum vs. Hulett, etc., the power is derived from Section 8, Article I of the Constitution, the war or defense powers; and as pointed out by this Court in the case of United States vs. Hall, 98 U. S. 343, 25 L. Ed. 180, such power has been exercised ever since the First Congress to insure that the proceeds of the pension or bounty will inure solely to the benefit of the pensioner.

Subsequent decisions of this Court are not to the contrary, but the Supreme Court of North Carolina in the instant case cites as authority for such contrary view, the language of this Court in the case of Lawrence vs. Shaw, supra, which reads as follows: "In order to carry out the intent of the statute, the avails of the Government warrants or checks must be deemed exempt until they are expended or invested." It is apparent, however, that this Court was then speaking of the tax exemption only, for that was the question before it. It may appear, aside from the statute, that the same rule should apply as to exemption from claims of creditors if the moneys have been *expended*, although not if merely invested. But suppose they, being only enough for actual subsistence, were *expended* for food and clothing. Should the veteran and his family starve or freeze or be made objects of charity because creditors exact their due? The Congress, it is clear, has established a public policy to protect the veteran in his enjoyment of his pension under such circumstances. Would the situation be any different as to investment of such benefits? Again, aside from the provisions of the statute, should a veteran be obliged to retain his pension or insurance money in his pocket to prevent seizure? The Court said in Lawrence vs. Shaw, supra, "Congress has declared that the payments of benefits by the Government shall be exempt not only before but 'after receipt by the beneficiary.' We cannot conceive that it was

the intent of Congress that the veteran should lose the benefit of this immunity, which would attach to the moneys in his hands, by depositing the government warrants or checks in bank to be collected and credited in the usual manner. These payments are intended primarily for the maintenance and support of the veteran. To that end neither he nor his guardian is obliged to keep the moneys on his person or under his roof."

The laws of the State of North Carolina required the guardian in the instant case to invest the benefit payments received by him from the Government for the maintenance and support of his ward, as is evidenced by the quoted portion of the Public Statutes of North Carolina, Chapter 33, Session 1929 (Michie's Code of North Carolina, Chapter 40-a, Section 2202 (13)—Investment of Funds), which appears on page 34 of the Appendix hereof, and which statute at the time of its passage by the Legislature of North Carolina in 1929 was entitled "An Act regulating the Guardianship of Incompetent Veterans and of minor children of disabled or deceased Veterans and the Committment of Veterans to the United States Government Hospitals."

Can a State thereby deprive the incompetent veteran of the protection granted by the Federal law and render his benefit payments so invested subject to the claim of creditors? As to taxation the Congress has specifically so provided, but as to the claims of creditors, it is insisted that the intention of Congress was just the opposite.

Would such narrow scope be given to the Congressional power and intent as to protecting a beneficiary's estate from embezzlement—viz. that Section 2 of the same Act, Public No. 262, 74th Congress, should extend only to payments as money and not to same when invested? The case of United States vs. Hall, supra, seems to have settled this question.

Should the broad supervisory responsibility in guardianship matters prescribed by Section 1 of said Act (Sec. 450, Title 38, U. S. C., as amended) be so narrowly construed as

to be confined to moneys only in the hands of a fiduciary? The language of this Court in the case of Hines vs. Lowrey, No. 24, October Term, 1938, decided November 7, 1938, 83 L. Ed. 62, seems a clear recognition of a broader intent and purpose.

The only other basis given by the Supreme Court of North Carolina for its decision in the instant case is that a liberal construction would "lead us into chaos. When the investments are bona-fide made and a novation takes place, taxes attach and creditors have a right to collect their just debts. We hardly think that the noble, heroic veterans would have it otherwise."

With respect to the alleged chaotic results, it is respectfully submitted that if carrying out the legislative intent so results, the remedy lies with the Congress. But nothing is shown to indicate that such would be the result. Perhaps more is to be feared in this respect if the State Courts do not give effect to the Federal laws.

With respect to the reference to the principle of novation, it is fundamental that this term implies the substitution of a new obligation for an old one which is thereby extinguished. 46 C. J. 573, Sec. 1, et seq., and cases cited. It arises only in contract, Ibid p. 578. Guardians may not, without a court order, change the character of trust funds held by them or make a novation—excepting negotiable instruments, Ibid p. 584.

It is clear that "novation" in no manner concerns the situation here presented. There is no privity of contract as between the veteran, sane or insane, and his creditors, actual or potential, as to his pension or insurance—indeed such is prohibited by the Federal statute; he is not permitted to assign or pledge it.

The situation which is here presented is that of an incompetent veteran whose guardian in accordance with the laws of the State of North Carolina has invested the payments made for his benefit by the United States Government. Had the guardian done otherwise it could have well been con-

tended that he was derelict in his duty and subject to removal. Surely this is not a case of one choosing "to trade in land or in merchandise, in bonds or in shares of stock." The beneficiary of the Government did not choose, indeed, he could not choose, and his guardian did only that which he was compelled to do with the payments of benefits.

Even though there may have been a change in the species of the funds paid for the veteran's benefit, the protection and immunity created by Congress goes to the substance, not the form—to the thing itself, that is the funds derived from the payments even though the payments have been invested for they still remain benefits for the veteran and are held by his guardian as such. Certainly the intent and purpose of Congress must not be thwarted and the immunity and protection which Congress has given to the "Payments of benefits" to veterans must not be swept aside and the veteran and his estate penalized because the guardian was faithful to his trust and changed the form and not the substance of the benefits.

Summary

To give the narrow construction to the language of Section 454(a), Title 38, U. S. C., as decided by the Supreme Court of North Carolina would be contrary to the judicial and legislative history of said Act; would raise a serious question as to the meaning of portions of Sections 1 and 2 of the same Act, Public No. 262, 74th Congress; would be contrary to the accepted rules of statutory construction, and would deprive veterans, and other beneficiaries of the full immunity and protection intended by Congress. In so construing the Federal statute, the North Carolina Supreme Court misinterpreted the decision of this Court in the case of Lawrence vs. Shaw, supra, and deprived the veteran of a right, privilege, or immunity guaranteed by said Federal law.

CONCLUSION

It is respectfully submitted that this Court has jurisdiction of the subject matter of this action; that petitioners are entitled to appear and seek a review by this Court of the judgment below; that such judgment is erroneous; and in view of the importance of the question, and its wide application to many other cases of similar trusts, as well as in thousands of cases of veterans *sui juris*, this Court should grant the writ of certiorari as requested herein, and reverse said judgment.

JOHN W. WOOD,
Attorney for Petitioners

APPENDIX

Hearings Before the Sub-Committee on Hospitalization and Guardianship of Incompetent Veterans, Committee on World War Veterans' Legislation of House of Representatives, by Authority of H. Res. 409, 73rd Congress, Part 3, Pages 261 to 264, December 13, 1934.

* * * * * * * * * *

The Chairman. We have added, or, at least, we are suggesting that this proviso be added:

> Provided, That the provision hereof relating to claims of creditors may be waived by the Administrator of Veterans' Affairs when such waiver is shown to be for the sole benefit of an incompetent or minor beneficiary. Sections 4747, Revised Statutes; 308, World War Adjusted Compensation Act, and 2[9], World War Veterans' Act, are repealed, and all other acts inconsistent herewith are modified hereby.

Did you make that in your recommendation, General?

General Hines. I do not recall that. Would you let Mr. Odom explain what his views are on that? I do not recall that I brought that up.

The Chairman. It is right here on the last page, Mr. Odom.

General Hines. It will probably bring some question, I imagine, from creditors, will it not?

Mr. Edward E. Odom. May I address my remarks first to the sixth line in that section, and then come to the chairman's question, because I think it has a bearing on it?

The Chairman. Very well.

Mr. Odom. The suggestion that the Administrator made, I believe, read this way:

> This provision shall not attach to any property purchased wholly or in part out of such payments, nor to claims of the United States arising under such laws.

The first clause of that suggested sentence was intended to bring this section into line with the decision of the Supreme Court of the United States in the case of Trotter vs. Tennessee; and, as applied to taxation, probably is correct if the intention of the Congress is that property purchased out of the insurance and compensation payments should not be exempt from taxation. The Supreme Court has held that under the present law it is not exempt; but there is a serious question whether—for example, if a veteran, as I think was suggested by Justice Cardozo, takes his compensation and buys a barrel of flour with it or a side of meat, that that should not be exempt, the same as the money itself; or, if he invests it in bonds, that the bonds should or should not, as might be decided by the Congress, be exempt from the claims of his creditors.

It was our understanding that this would not affect the present holding that these funds, no matter in what form they are invested, would be exempt from the claims of creditors. But there is a case pending in the Supreme Court of the State of North Carolina, and another one in the Kentucky Supreme Court, where the decision of the Supreme Court of the United States in the case of Trotter vs. Tennessee is being argued as applicable to the claims of creditors; that is, that if the veteran puts his money in property, that it is no longer exempt from the claim of the creditor.

If that is the proper effect of this language, it occurs to us that the committee might desire to give some consideration to whether they would not change that so as to make it clear that it is only on the question of taxation that the property shall not be exempt.

In other words, it could be argued, I suppose well, that the veteran's property should be taxed the same as anybody else's. Now, whether his property should also be free from the claims of creditors when that property is purchased with these funds, is the question that ought to be considered by the committee at this time, I think.

Now, coming to the question of the chairman on this proviso, that the Administrator of Veterans' Affairs should have authority to waive the exemption when it seems to be for the benefit of the veteran or the beneficiary to do so; my theory, Mr. Chairman, may be wrong, but it is my theory that the Congress of the United States, under the Consti-

tution, has authority to say what shall be the administrative duties and the administrative responsibilities and the administrative authority of any employee or officer of the United States Government. I question very seriously whether the Congress of the United States, on a matter that is within the powers reserved by the Constitution to the States, could enact legislation which would modify the laws of the States or the procedure of the courts on a question solely within the States' jurisdiction.

It is my thought, therefore, that, while this would give the Administrator of Veterans' Affairs authority not to insist upon the court granting the exemption—and I think he has that authority now without it being in the act—that it would not and could not, by virtue of the constitutional provisions, give any authority to the court to waive that exemption. In other words, if the court has authority to waive the exemption—I am speaking now of a court having general equity powers rather than a probate court having more limited statutory jurisdiction—that authority exists by virtue of such powers and not by virtue of a Federal act.

The Chairman. I think we can agree on it. What do you think about it, Mr. Pappenfort?

Mr. Pappenfort. A Federal statute could not, of course, give an administrative official the power to waive a State law. But this proviso merely gives the Administrator power to waive such claims as he may deem equitable, insofar as objecting to those claims in court is concerned. That is all. In other words, if the Director, under this power, waived a claim, and then the court, a State court, decided to allow it, of course, the decision of the State court would prevail.

Mr. Griswold. You cannot waive the defense to a claim.

Mr. Pappenfort. Yes.

The Chairman. Do you care to make a statement, Mr. Odom?

Mr. Edward E. Odom. With one reservation, Mr. Chairman; we feel that we have a duty to the guardian as well as to the ward, always keeping in mind that the ward's interests are paramount. We feel that we should not permit a guardian, particularly if that guardian is the mother or other near relative of the beneficiary, to be placed in a position where someone might come along later on and hold that guardian liable for some failure to act, which

might be this very thing, to claim an exemption under the law.

The Chairman. Just a minute. You are getting into a fundamental question, as I view it. You say you do that to protect the guardian.

Mr. Odom. To a certain extent, keeping in mind always, Mr. Chairman, that the interest and welfare of the ward are paramount.

The Chairman. It is the idea, then, of the Bureau that the primary duty is the duty to the ward?

Mr. Odom. Always, without any reservation whatsoever; and if there is the slightest degree of difference of interest between the guardian and the ward, we absolutely take care of the ward's interests.

But that does not mean, Mr. Chairman, as I see it, that we can sit by and see the mother of a beneficiary, who happens to be the guardian of the beneficiary, or any other guardian—perhaps if it is a lawyer or a trust company we should not be so solicitous about them—fail to protect themselves by failing to claim the exemption.

The Chairman. All guardians have their own lawyers.

Mr. Odom. No, sir; we act as lawyers for a great many of them.

Mr. Griswold. You do not mean to say that you act for the beneficiary and act for the guardian, two diverse interests?

Mr. Odom. In cases which are so small that it is hardly possible for the guardian to employ an attorney to make up the accounts, we do, if the guardian requests it, make up those accounts for them and file them with the Court.

General Hines. May I say a word? In other words, many of these accounts are small and many of them, custodial awards, it would be a hardship on the guardian, for example, a mother who handles the matter. But Mr. Odom is going beyond what I understood from Mr. Pappenfort. In other words, we have the right to call the attention of the cor to this matter, and if the court turns us down, which th have the jurisdiction to do, I think that settles it.

The Chairman. I think we have had enough testimony on that. It is not as important as other matters and I think we will proceed on other matters.

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Public Statutes of North Carolina, Chapter 33, Session 1929 (Michie's Code of North Carolina, Chapter 40-a, Section 2202 (13)—Investment of Funds).

Investment of funds—Every guardian shall invest the funds of the estate in any of the following securities:

(a) United States Government bonds.

(b) State of North Carolina bonds issued since the year one thousand eight hundred seventy-two.

(c) By loaning the same upon real estate securities in which the guardian has no interest, such loans not to exceed fifty per cent (50%) of the actual appraised or assessed value, which ever may be lower, and said loans when made to be evidenced by a note, or notes, or bond or bonds, under seal of the borrower and secured by first mortgage or first deed of trust. Said guardian before making such investment on real estate mortgages, shall secure a certificate of title from some reputable attorney certifying that the same is the first lien on real estate and also setting forth the tax valuation thereof for the current year; Provided said guardian may purchase with said funds a home or farm for the sole use of said ward or his dependents upon petition and order of the clerk of the Superior Court, said order to be approved by the resident or presiding judge of the Superior Court and provided further that copy of said petition shall be forwarded to said bureau before consideration thereof by said court.

It shall be the duty of guardians who shall have funds invested other than as provided for in this section to liquidate same within one year from the passage of this law: Provided, however, that upon the approval of the judge of the Superior Court, either residing in or presiding over the courts of the district, the Clerk of the Superior Court may authorize the guardian to extend from time to time the time for sale or collection of any such investments: that no extension shall be made to cover a period of more than one year from the time the extension is made.

The Clerk of the Superior Court of any county in the state or any guardian who shall violate any of the provisions of this section shall be guilty of a misdemeanor, punishable by fine or imprisonment or both in the discretion of the court.

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